

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHINORI MUZUMURA

Appeal 2006-3312
Application 09/816,774
Technology Center 1700

Decided: January 5, 2007

Before CHUNG K. PAK, CATHERINE Q. TIMM, and LINDA M. GAUDETTE, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-7, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

The subject matter on appeal relates to a lubricating member for use in the lubrication of rolling bearing, linear motion devices (ball screw, linear guide, etc.) or the like for food-processing equipment (Specification 1:5-8). Conventionally, such lubricating members include a base resin and a lubricant (Specification 1:9 to 2:3). While the materials are selected to be non-toxic, at high operating temperatures the base resin may be eluted from the lubricating member and become harmful to human beings (Specification 2:3-6). The claims are directed to a process of operating the lubricating member at temperatures low enough to prevent elution of the resin. Claim 1 is illustrative:

1. A method of using a lubricating member for food-processing equipment, said method comprising:

preparing a food-processing equipment lubricating member made of a polyolefin resin and a lubricant; and

using said lubricating member at a temperature in the range from the pour point of said lubricant to not higher than 70°C.

The Examiner relies on the following prior art references to show unpatentability:

ASO (as translated)	JP 10-36875	Feb. 10, 1998
YABE	US 6,119,813	Sep. 19, 2000

The Examiner rejects claims 1-7 under 35 U.S.C. § 103(a) as unpatentable over either Yabe or Aso.¹

We affirm substantially for the reasons advanced by the Examiner in the Answer and add the following primarily for emphasis.

¹ The Examiner and Appellant refer to Aso as JP '875.

OPINION

There is no dispute that both Yabe and Aso suggest the use of a lubricating member made of a polyolefin resin and a lubricant in a food-processing operation as found by the Examiner (Answer 3-4). The Examiner acknowledges that neither reference specifically discloses the temperatures at which the member is used. However, the Examiner finds that the disclosures of the references provide evidence that normal operating temperatures for such equipment include temperatures within the claimed range of from the pour point to not higher than 70°C (Answer 3-6). It follows that it would have been obvious for the ordinary food processor to operate the food processing equipment at such normal operating temperatures.

Appellant seems to believe that the Examiner's rejection is based on a theory of inherency (Br. 11). That is not the case. The rejection is based upon the knowledge of one of ordinary skill in the art with regard to food-processing applications and the key question is: Would it have been obvious to one of ordinary skill in the art to operate the lubricating member of the references at temperatures in the claimed range in the ordinary course of a food-processing operation. Given that food-processing applications include such things as mixing, kneading, cooling, and filling (Aso, p. 3, ¶ 0002), operations usually conducted at room temperature (20°C) or below, it is evident that employing the lubricant member in food-processing equipment for such uses would result in operation at temperatures below 70°C. We find no evidence to support Appellant's assertion that friction would cause the lubricating member to heat up to such an extent, during operation at normal operating temperatures, such as 20°C, that the lubricating member

would reach the much higher temperature of 70°C (Br. 11). Appellant's assertion appears to be contrary to the purpose of the lubricating member, which is to reduce friction.

In the above context of the rejection, it matters not that the references are silent regarding a temperature limitation (Br. 10) or that the references do not discuss an elution problem at high temperatures (Br. 9 and Reply Br. 5). Nor must the reference preclude every high temperature operation (Reply Br. 6-7). The references suggest using the lubricating member in food processing equipment. The consideration of the question of obviousness includes the consideration of how one of ordinary skill in the art would have used that food-processing equipment given the knowledge in the art at the time of the invention. At least some food processing applications such as mixing and cooling take place at ambient or lower temperatures, temperatures within the claimed range.

We conclude that the Examiner has established a prima facie case of obviousness with respect to the subject matter of claims 1-7 that Appellant has not sufficiently rebutted.

CONCLUSION

In summary, the Examiner rejected claims 1-7 under 35 U.S.C. § 103(a). We affirm the decision of the Examiner.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tf/cam

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